

Registry's translation, the French text alone being authoritative.

FIFTY-FIRST ORDINARY SESSION

In re de GROOT

Judgment No. 576

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Telecommunication Union (ITU) by Mr. Hugo de Groot on 2 March 1983 and brought into conformity with the Rules of Court by 10 May, the ITU's reply of 6 June, the complainant's rejoinder of 7 September, the ITU's surrejoinder of 28 October 1983 and the complainant's further communication of 4 November 1983;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Regulations 1.2 and 8.1 and Rules 8.1.1 and 11.1.1.2 a) and b) of the ITU Staff Regulations and Staff Rules;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. The complainant, a citizen of Sweden, joined the secretariat of the International Frequency Registration Board (IFRB) of the ITU in 1973 as an administrative assistant at grade P.1 in the Regulations Application Division (RAD). On 1 January 1977 he was promoted to P.2. In 1980 he was elected Secretary of the Staff Association and Staff Council, and he is now Chairman of the Association. On 26 November 1980 he was moved to the Co-ordination and Agreements Division (CAD). In February 1982 he filled up Part II (description of duties) of his appraisal report for 1981. On 8 March 1982 the head of his department told him he was to go back at once to RAD. On 24 May the Chairman of the IFRB sent him his report. On 18 June he wrote to the Secretary-General, in accordance with Rule 11.1.1.2 a), requesting review of the report and objecting to defects in the procedure, some of the remarks made and his return to RAD. On 27 July the Secretary-General rejected his request and on 8 September he appealed to the Appeal Board under 11.1.1.2 b). In its report of 27 September the Board recommended that (a) a new report should be made for 1981; (b) it should not mention his Staff Association activities and the rating of his output as "passable" should be reviewed; (c) staff leaders should have their working hours reduced; and (d) the complainant should be offered career opportunities. In a letter of 3 December, delivered on 4 December, the Secretary-General said that he rejected (a), (b) and (c), but as to (d) invited him to apply for any suitable vacancy. That is the impugned decision.

B. The complainant alleges that his report for 1981 was not discussed with him before his supervisors made their comment and signed it. Part III.2 of the report form says that no report shall be considered complete unless the official and his immediate supervisor have discussed it. In this case he had not, and the procedure was irregular. The unfavourable comments are due to his spending time on Staff Association work: in III.1 his supervisor says he has sometimes given priority to it over official duties, while under III.2.3 his output is described as only "passable", and there is mention of his Staff Association work. Yet Regulation 8.1 recognises the right of association, and part of his duties is to serve on the Staff Council, a body provided for in Rule 8.1.1. It is a breach of that right and of United Nations practice that staff members should suffer for doing staff work in working hours. His supervisor wrongly refused to confirm the description of duties in Part II. He raised this point in his appeal, but the Board made no recommendation. Although, according to Regulation 1.2, "staff members are assigned to their duties according to the needs of the Union", his reassignment to RAD should be quashed as an abuse of authority, being designed to keep him from staff work and therefore a breach of freedom of association. There was no talk of reassignment until he attended meetings of the International Civil Service Commission, and he believes this annoyed his supervisor. To give other reasons is in breach of good faith. He invites the Tribunal to order the ITU to make a new report for 1981 in keeping with the proper procedure, make no adverse appraisal on the grounds of his Staff Association work, confirm his job description and quash his reassignment to RAD. He also seeks costs.

C. The ITU makes the following main submissions in its reply. (1) The complainant's assignment to CAD was temporary since he was seconded to replace someone assigned, also temporarily, to another branch. When the letter returned to CAD the complainant's secondment from RAD ended. (2) Under an informal understanding in force since 1948 reasonable time off has been allowed to staff representatives, with their supervisors' consent. At the Staff Council's instigation the Administrative Council, in May 1983, authorised the main staff representative to take time off up to 30 per cent of normal working hours. (3) Only the appraisal of the complainant's output was less than satisfactory, and he suffered no sanction, such as having his annual salary increment withheld. (4) He himself drafted the job description in his report, and it is not yet approved by the Administration, some of the functions mentioned being temporary and no longer required. (5) There is no evidence to suggest that his supervisor objected to his spending time at meetings of the International Civil Service Commission. (6) His criticisms of the procedure are irreceivable. The statement that no report is complete unless the official and his supervisor have discussed it refers to Part IV of the form, in which the official declares he has examined the report with his supervisor and may add his own comments. Besides, the complainant ought to have filled up Part IV, which is still blank, before starting the appeals procedure. The ITU invites the Tribunal to dismiss the claims.

D. In his rejoinder the complainant observes, in particular, that in the ITU there is no practical difference between secondment and reassignment: many staff like himself, supposedly on temporary secondment, are in fact permanently transferred. Although the ITU makes out that his report was not a bad one, the IFRB proposed in April 1983 the summary termination of his appointment, and if the Secretary-General agreed the report would be held against him. If his post were abolished, it would also work against his redeployment. The requirement of discussion of a report obviously does not refer merely to Part IV of the report form since it is stated under Part III. In 1981 he had only 10 to 15 per cent time off for staff work and had to do a good deal of overtime. Time off should be adequate and certainly more than what is stated in C(2) above; he did not abuse his rights in this regard and he is entitled to have his report for 1981 redrafted accordingly. He enlarges on his submissions in favour of obtaining a job description and his return to CAD, from which he says he was abruptly removed.

E. In its surrejoinder the ITU explains that fluctuations in workload require the grant of temporary assignments, sometimes to existing staff on secondment -- a policy endorsed by the Administrative Council in 1980. The complainant, who, as Secretary of the Staff Council, had lesser responsibilities than other representatives, did not have his supervisors' consent to spending 10 to 15 per cent of working time on staff work -- a figure in dispute anyway. In 1982 and 1983 he spent without permission, up to 80 per cent of his time on staff work. The ITU discusses the question of time off. There was no connection between his return to RAD and his staff work. Lastly, if there was a flaw in the reporting procedure it was due to his own tardiness in filling up Part IV of the form.

F. In a further communication of 4 November 1983 the complainant's counsel applies for the disclosure of several documents in the Joint Advisory Committee file.

CONSIDERATIONS:

Claims based on the report for the period from 1 January to 31 December 1981

1. On 12 March 1982 the complainant asked for the text of his annual report for 1981 and on 24 May he got a copy.

The report consisted of a form in five parts, of which the first three had been completed. Part I gave "personal history" and was completed by the Personnel Department; Part II had been filled up by the complainant; Part III had been drafted by his first-level supervisor and signed by the head of his department and a competent official of the specialised secretariat of the International Frequency Registration Board (IFRB) (which, being directly responsible to the ITU, may be treated as part of it).

The two remaining parts were blank: Part IV, entitled "Review by staff member", and Part V, which was to be sent, upon completion of Part IV, to the Personnel Department.

2. The form invites the staff member to take up his report with his first-level supervisor or the head of department, the purpose being to "foster a constructive dialogue". On receiving the report the complainant did not do so. Instead on 18 June, he wrote directly to the Secretary-General asking, among other things, that a new report be drafted and saying that his letter constituted notice of appeal. In a minute of 27 July the Secretary-General rejected his request and pointed out that he had not yet filled up Part IV of the form.

On 8 September the complainant submitted an appeal to the ITU Appeal Board. In its report of 27 September the Board recommended the redrafting of the report and discussion between the parties. But the Secretary-General disagreed: on 3 December 1982 he refused to have the procedure resume for the drafting of a new report.

3. The complainant submits that the reports procedure was not complied with and that the comments on the form are unlawful. The ITU objects to the receivability of the complaint on this point and contends that in any event the report is lawful.

4. There is no doubt that the complainant failed to comply with the requirements of Part IV of the form. The staff member sees Part I when he completes Part II, and the form goes back to him upon completion of Part III. He reviews it and discusses it either with his first-level supervisor or with the "head of organ/department". Only then does he add his own comments. But what the complainant did was to submit notice of appeal directly and so bypass the discussion stage.

The result is that the ITU has not taken the decision which could have been properly challenged.

The complainant submits that the way in which Part III was completed was irregular because he never discussed the ratings and comments it contained.

Even supposing the drafting of Part III was in breach of his rights, the course he should have followed on receiving the report was to seek an interview with his supervisor and add his comments, and then to challenge the final decision which would have been taken after he had made such comments. He chose instead to file notice of appeal directly and immediately. His letter of 18 June 1982 to the Secretary-General cannot be assimilated to discussion of the text with his first-level supervisor. He himself by-passed the largely informal discussion stage and appealed prematurely by making a formal approach to the senior authorities of the organisation, the Secretary-General and then the Appeal Board. He thereby interrupted the procedure for preparation of the final text, and only that text constitutes a decision. Neither when he filed notice of appeal nor later, when he filed his appeal, was there any decision, nor was the position put right either by the Secretary-General's minute of 27 July 1982 or by the Board's report. The complainant did no more than challenge a preliminary act, and his present claim to have it set aside is irreceivable.

Claim for confirmation of the job description made by the complainant in 1981

5. This claim too is irreceivable. Even though the complainant's draft was altered by his first-level supervisor, it was never approved by the competent authority. The general principle, moreover, is that the Tribunal will not interfere in the official's relations with his employer unless the organisation requires him to Perform duties which have no bearing on his qualifications. In this case clearly it did not.

Claims relating to the oral decision requiring the complainant to return to his former post in RAD

6. The complainant formerly held a grade P.2 post in the Regulations Application Division (RAD). On 26 November 1980 he was "temporarily" moved to the Co-ordination and Agreements Division (CAD). On 8 March 1982 the department head informed him that he was to return to RAD immediately.

7. While acknowledging that assignment is a matter for the Secretary-General's discretion, the complainant pleads that in this case the decision he is challenging constituted misuse of authority: the Administration sought to attack the freedom of association which is guaranteed by the Staff Regulations.

He submits that his transfer to RAD in 1980 was represented as a permanent assignment intended to offer him new career opportunities. For a year and a half his supervisors never spoke to him of any return to CAD and indeed he drafted a job description which was amended by the department head. In his view what prompted the decision was his appointment on 2 March 1982 by the ITU Staff Committee to represent the staff at a session of the International Civil Service Commission. He was sent back to RAD six days later without any notice whatever.

8. The ITU replies that the only reason for his return to RAD was work requirements.

9. On the evidence produced by the ITU it appears that there was a temporary need in 1980 to strengthen CAD. Although the complainant says the transfer had been represented to him as permanent, he provides no evidence of this.

The complainant's drafting of a job description which his supervisor amended does not afford any proof of the permanence of his assignment.

The only point in his favour is the suddenness of the decision, which came only a few days after he had attended meetings as a staff representative.

But the coincidence does not suffice to establish any misuse of authority. The circumstances of his return to RAD may be regrettable, but they have no effect on the lawfulness of the decision.

Claim for disclosure of the Joint Advisory Committee file

10. The Tribunal holds that the disclosure of this file is not necessary for the hearing of the case.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 20 December 1983.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner